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9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**
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12 ROSARIO JOSE SIGALA-MARTINEZ,
13
14 vs. Petitioner,
15 UNITED STATES OF AMERICA,
16 Respondent.

Case Nos. 09cv2099 BEN
08cr2302 BEN

**ORDER DENYING § 2255
MOTION**

17
18 **INTRODUCTION**

19 Petitioner Rosario Jose Sigala-Martinez moves pursuant to 28 U.S.C. § 2255 for a reduction
20 in his sentence. Dkt. No. 18. Because Petitioner waived the right to challenge his sentence and he
21 received the sentence he agreed to in the plea agreement, the Court **DENIES** the motion.

22 **DISCUSSION**

23 **I. Waiver**

24 The Ninth Circuit recognizes strong public policy considerations justifying the enforcement
25 of a defendant's waiver of his right to appeal or collaterally attack a judgment. *United States v.*
26 *Novarro-Botello*, 912 F.2d 318, 321 (9th Cir. 1990). Waivers play an important role in the plea
27 bargaining process and help ensure finality. *Id.* at 322. Generally, courts enforce a defendant's
28 waiver of his right to appeal, as long as the waiver was "knowingly and voluntarily made" and

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1 “encompasses the defendant’s right to appeal on the grounds claimed on appeal.” *United States v.*
 2 *Nunez*, 223 F.3d 956, 958 (9th Cir. 2000) (quoting *United States v. Martinez*, 143 F.3d 1266, 1270-
 3 71 (9th Cir. 1998)).

4 Petitioner waived his right to collaterally attack his sentence in his plea agreement. Plea
 5 Agreement (Dkt. No. 11) ¶ 12. The plea agreement states that “[i]n exchange for the
 6 Government’s concessions in this plea agreement, defendant waives, to the full extent of the law,
 7 any right to appeal or to collaterally attack the guilty plea, conviction, and sentence.” *Id.* (emphasis
 8 added). Petitioner’s knowing and voluntary waiver of his right to collaterally attack his sentence
 9 requires denial of his § 2255 motion.

10 **II. Ineffective Assistance of Counsel**

11 Even if Petitioner had not waived his right to collaterally attack his sentence, his ineffective
 12 assistance of counsel claim fails. The Sixth Amendment provides a general right to effective
 13 assistance of counsel for all criminal defendants. *Strickland v. Washington*, 466 U.S. 668, 688
 14 (1984); *United States v. Alferahin*, 433 F.3d 1148, 1160-61 (9th Cir. 2006). Pursuant to
 15 *Strickland*, successful IAC claims demonstrate that: (1) the attorney’s performance “fell below an
 16 objective standard of reasonableness;” and (2) there exists “a reasonable probability that, but for
 17 counsel’s unprofessional errors, the result of the proceeding would have been different.”
 18 *Strickland*, 466 U.S. at 687-88, 695. Petitioner fails to satisfy these elements.

19 The Court finds no deficiency in counsel’s performance, but even if there were some error,
 20 Petitioner cannot demonstrate that but for the error, the proceedings would have been different.
 21 There can be no prejudice to Petitioner because Petitioner received the sentence he agreed to in the
 22 plea agreement. Petitioner agreed to and jointly recommended a 48-month sentence in his plea
 23 agreement. Plea Agreement ¶ 9. Petitioner received a 48-month sentence. Judgment (Dkt. No.
 24 17) 2. Because Petitioner cannot demonstrate ineffective assistance of counsel under these
 25 circumstances, his Petition must be denied.

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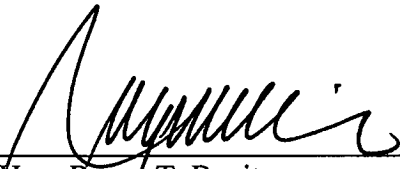
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CONCLUSION

Petitioner's motion is **DENIED**. The Clerk shall close case number 09cv2099. The Court **DENIES** a certificate of appealability because the issues are not debatable among jurists of reason and there are no questions adequate to deserve encouragement.

IT IS SO ORDERED.

DATED: February 15, 2011



Hon. Roger T. Benitez
United States District Court